



## Filing Receipt

**Received - 2021-10-28 02:15:36 PM**  
**Control Number - 51415**  
**ItemNumber - 685**

**SOAH DOCKET NO. 473-21-0538  
PUC DOCKET NO. 51415**

<b>APPLICATION OF SOUTHWESTERN</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ELECTRIC POWER COMPANY FOR</b>	<b>§</b>	
<b>AUTHORITY TO CHANGE RATES</b>	<b>§</b>	<b>OF TEXAS</b>

**OFFICE OF PUBLIC UTILITY COUNSEL'S  
REPLY TO EXCEPTIONS  
TO THE PROPOSAL FOR DECISION**

Chris Ekoh  
Interim Public Counsel  
State Bar No. 06507015

Zachary Stephenson  
Assistant Public Counsel  
State Bar No. 24073402  
Tucker Furlow  
Senior Assistant Public Counsel  
State Bar No. 24060897

OFFICE OF PUBLIC UTILITY COUNSEL  
1701 N. Congress, Suite 9-180  
P.O. Box 12397  
Austin, Texas 78711-2397  
512-936-7500 (Telephone)  
512-936-7525 (Facsimile)

ATTORNEYS FOR THE  
OFFICE OF PUBLIC UTILITY COUNSEL

**October 28, 2021**

## **TABLE OF CONTENTS**

V.	Invested Capital - Rate Base [PO Issues 4, 5, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22] .....	2
A.	Generation, Transmission, and Distribution Capital Investment [PO Issues 4, 5, 10, 11, 13, 14, 15, 16] .....	2
2.	Dolet Hills Power Station [PO Issues 67, 68, 69, 70, 71] .....	2
1.	Oxbow Mine Reserves .....	3
VII.	Expenses [PO Issues 1, 14, 24, 29, 30, 32, 33, 40, 41, 42, 44, 45, 46, 49, 72, 73, 74] .....	3
A.	Transmission and Distribution O&M Expenses [PO Issues 14, 24] .....	3
5.	Distribution Vegetation Management Expense & Program Expansion [PO Issue 27] .....	3
E.	Purchased Capacity Expense .....	4
VIII.	BILLING DETERMINANTS [PO ISSUES 4, 5, 6, 54] .....	5
B.	ETSWD's Proposed COVID-19 Adjustment .....	5
	Conclusion .....	5

**SOAH DOCKET NO. 473-21-0538  
PUC DOCKET NO. 51415**

<b>APPLICATION OF SOUTHWESTERN</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ELECTRIC POWER COMPANY FOR</b>	<b>§</b>	
<b>AUTHORITY TO CHANGE RATES</b>	<b>§</b>	<b>OF TEXAS</b>

**OFFICE OF PUBLIC UTILITY COUNSEL’S  
REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully submits this reply to exceptions to the proposal for decision (“PFD”) issued by the State Office of Administrative Hearings (“SOAH”) in this proceeding on August 27, 2021.

The PFD recognizes the many flaws in Southwestern Electric Power Company’s (“SWEPCO”) application as identified by OPUC, other intervenors, and Staff of the Public Utility Commission of Texas (“Commission Staff”).

Additionally, regarding rate design, the PFD recognizes the efforts of SWEPCO to bring all consumer classes as close as possible to their cost basis for providing service, ensuring rates that are just and reflective of the costs of providing service.

OPUC replies to the following exceptions to the PFD: (1) SWEPCO’s request to leave Dolet Hills in rate base, the carrying cost of the Dolet Hills Rate Rider and the rate treatment of the Oxbow Mine, (2) Commission Staff’s request to institute a 4 year trim cycle in SWEPCO’s vegetation management program, (3) the request of Texas Industrial Electric Consumers (“TIEC”) to impute capacity to SWEPCO’s wind purchased power agreements (“PPA”), and (4) East Texas Salt Water Disposal Company’s (“ETSWD”) request to update the class cost of service study (“CCOS”) and SWEPCO’s billing determinants.

For the reasons discussed below, OPUC requests that the Commission issue an order in this proceeding consistent with OPUC’s reply to exceptions to the PFD.

**V. Invested Capital - Rate Base [PO Issues 4, 5, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22]**

**A. Generation, Transmission, and Distribution Capital Investment [PO Issues 4, 5, 10, 11, 13, 14, 15, 16]**

**2. Dolet Hills Power Station [PO Issues 67, 68, 69, 70, 71]**

OPUC appreciates the considerations of the ALJs and agrees with their findings regarding the need to place cost recovery for operations of the Dolet Hills Power Station into a separate rate rider.<sup>1</sup> SWEPCO continues to argue against exclusion of Dolet Hills from base rates due to its misunderstanding of the Cost-of-Service rule and the argument that it prevents SWEPCO from earning a reasonable return on its investment.<sup>2</sup>

First, the Dolet Hills Rate Rider, as proposed in the PFD, allows SWEPCO to earn a return *of* and *on* its investments in Dolet Hills until the plant is retired at the end of 2021, and then permits SWEPCO to earn a return *of* its investment through the end of Dolet Hills' depreciation in 2046.<sup>3</sup> Therefore, the argument that SWEPCO would not be earning a reasonable return is erroneous.

Secondly, as expressed by the ALJs, the Commission left itself the ability to make exceptions to the cost-of-service rule through a good cause exception.<sup>4</sup> The ALJs then provided their basis for supporting a good cause exception: 1) SWEPCO's timing for filing its base rate application was a year and half before it was required and when Dolet Hills could have been properly removed from base rates;<sup>5</sup> and 2) the size of the investment, \$122.8 million on a total company basis.<sup>6</sup> OPUC agrees with the ALJs and urges the Commission to adopt the PFD's position that excludes Dolet Hills from rate base and places the plant into a separate rate rider,

---

<sup>1</sup> PFD at 52 – 53 (Aug. 27, 2021).

<sup>2</sup> Southwestern Electric Power Company's Exceptions to the PFD at 9 – 19 (Oct. 7, 2021) (SWEPCO Exceptions).

<sup>3</sup> PFD at 56 – 57.

<sup>4</sup> *Id.* at 50. *See* 16 Tex. Admin. Code § 25.3(b).

<sup>5</sup> *Id.* at 51. *See* OPUC Post-Hearing Initial Brief at 4–5 (Jun. 17, 2021). (“OPUC Initial Brief”). *See also* OPUC's Post-Hearing Reply Brief at 3 (Jul. 1, 2021). (“OPUC Reply Brief”).

<sup>6</sup> *Id.* at 52.

allowing the Company to earn a proper return, while protecting ratepayers from paying excess amounts of money for an asset that is no longer used and useful.

SWEPCO goes on to request, in the event that the Dolet Hills Rate Rider is approved, that the Commission allow SWEPCO to carry the undepreciated value of Dolet Hills with SWEPCO's Weighted Average Cost of Capital ("WACC") or at a minimum, their cost of debt component.<sup>7</sup> OPUC opposes this as essentially allowing SWEPCO to profit and earn a return on a plant that is no longer in service and therefore no longer used and useful.<sup>8</sup>

### **1. Oxbow Mine Reserves**

SWEPCO notes that the Oxbow Mine Reserves ("Oxbow") are being recovered through fuel, and therefore are not appropriate for inclusion in the Dolet Hills Rate Rider beginning in 2022 for amortization.<sup>9</sup> To the extent this is determined to be the case, OPUC can agree that if Oxbow is recovered through fuel that it should not be included in the Dolet Hills Rate Rider after the retirement of Dolet Hills.

## **VII. Expenses [PO Issues 1, 14, 24, 29, 30, 32, 33, 40, 41, 42, 44, 45, 46, 49, 72, 73, 74]**

### **A. Transmission and Distribution O&M Expenses [PO Issues 14, 24]**

#### **5. Distribution Vegetation Management Expense & Program Expansion [PO Issue 27]**

As noted in OPUC's Exceptions to the PFD, OPUC continues to oppose the additional \$5 million in vegetation management expense.<sup>10</sup> For the same reasons enumerated in OPUC's Exceptions, OPUC also opposes Staff's request to include the requirement of a 4-year trim cycle.<sup>11</sup> The ALJs properly rejected this position due to the potential costs and acknowledged that other

---

<sup>7</sup> SWEPCO Exceptions at 21 – 25.

<sup>8</sup> PFD at 49 – 50. *Citing Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing, FoF Nos. 66, 68, 69, 71 (Mar. 19, 2018); PFD at 94 (Sep. 22, 2017). ("...a retired plant is not considered a "used and useful" investment properly included in rate base under PURA and Commission rules, and that "the interests of ratepayers and shareholders with respect to a plant that no longer provides service" are properly balanced by "[a]llowing [the utility] a return on, but not of, its remaining investment."").

<sup>9</sup> SWEPCO Exceptions at 20 – 21.

<sup>10</sup> OPUC's Exceptions to the PFD at 3 – 4 (Oct. 7, 2021). ("OPUC Exceptions").

<sup>11</sup> Commission Staff's Exceptions to the PFD at 10 – 11 (Oct. 7, 2021). ("Staff Exceptions").

intervenors had already raised reasonable concerns regarding the additional \$5 million without the 4-year trim cycle requirement.<sup>12</sup> To require an even greater amount of spending without any positive correlation between the additional spending and improved reliability would result in excessive and unfair rates to residential and small commercial consumers with no corresponding benefit to system reliability. OPUC urges the Commission to continue to reject the requirement of a 4-year trim cycle.

### **E. Purchased Capacity Expense**

TIEC excepts to the PFD's treatment of SWEPCO's Wind Purchase Power Agreements ("PPA"), seeking to impute capacity to these wind contracts despite the fact that, by TIEC's own admission, the contracts are paid for on an energy, not demand, basis.<sup>13</sup> As noted by OPUC, this would violate cost causation principles of ratemaking and misalign costs.<sup>14</sup>

The ALJs correctly conclude that there is no capacity to impute to these contracts.<sup>15</sup> To reinforce this position, OPUC again reiterates that imputed capacity for the Southwest Power Pool's reserve margin does not equate to the need to impute capacity for SWEPCO's Texas system needs as TIEC would have the Commission believe.<sup>16</sup> Because SWEPCO has no need for additional capacity,<sup>17</sup> and because these costs have been and continue to be appropriately recovered through SWEPCO's fuel factor,<sup>18</sup> the Commission should adopt the position of the PFD and reject TIEC's attempt to impute capacity to SWEPCO's Wind PPAs.<sup>19</sup>

---

<sup>12</sup> PFD at 166.

<sup>13</sup> TIEC Exceptions to the PFD at 13 – 17 (Oct. 7, 2021).

<sup>14</sup> PFD at 248.

<sup>15</sup> *Id.*

<sup>16</sup> OPUC Reply Brief at 13.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 12 – 13.

<sup>19</sup> PFD at 248 – 249.

## **VIII. BILLING DETERMINANTS [PO ISSUES 4, 5, 6, 54]**

### **B. ETSWD's Proposed COVID-19 Adjustment**

OPUC appreciates the considerations and conclusions of the ALJs in rejecting ETSWD's request for a post-test year adjustment to SWEPCO's billing determinants and updated CCOS study in order to adjust cost allocation based on the temporal effects of COVID-19.<sup>20</sup> ETSWD again asks the Commission to make these same adjustments on the basis of the effects of the COVID-19.<sup>21</sup> ETSWD claims that the updated information from the COVID year constitutes a known and measurable adjustment.<sup>22</sup> However, the Commission has already determined that the effects of COVID are temporal, and therefore are not known and measurable.<sup>23</sup>

ETSWD also relies on information not in the record in this proceeding regarding the recent Delta variant of COVID-19 to justify its position.<sup>24</sup> OPUC notes that in the month since ETSWD filed their Exceptions to the PFD, the Delta variant's spread has greatly decreased within Texas, thus proving the ever-changing and temporal effects of COVID-19.<sup>25</sup> For the foregoing reasons and those previously stated by OPUC and in the PFD, OPUC encourages the Commission to reject ETSWD's proposal to cement the fleeting effects of the COVID-19 in electric rates for up to the next 4 years.

## **CONCLUSION**

For the reasons stated herein, OPUC respectfully requests that the Commission modify the PFD to include findings of fact and conclusions of law consistent with this reply to exceptions and that OPUC be granted any other relief to which it may be entitled.

---

<sup>20</sup> PFD at 263 – 265.

<sup>21</sup> ETSWD Exceptions to the PFD (Sep. 13, 2021). (“ETSWD Exceptions”).

<sup>22</sup> *Id.* at 4.

<sup>23</sup> See OPUC Initial Brief at 27. *Citing: Application of El Paso Electric Company to Amend its Certificate of Convenience and Necessity for an Additional Generating Unit at the Newman Generating Station in El Paso County and the City of El Paso*, Docket No. 50277 (Oct. 16, 2020).

<sup>24</sup> ETSWD Exceptions at 7.

<sup>25</sup> NOTE: Like ETSWD, this information is beyond the record of the proceeding, but OPUC wanted to respond to ETSWD's assertion with the following Press Release from the City of Austin. See: <https://www.austintexas.gov/news/austin-public-health-returns-stage-3-amid-delta-variant>.



October 28, 2021

Respectfully submitted,

Chris Ekoh  
Interim Chief Executive & Public Counsel  
State Bar No. 06507015



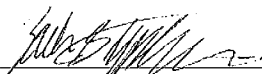
---

Zachary Stephenson  
Assistant Public Counsel  
State Bar No. 24073402  
Tucker Furlow  
Senior Assistant Public Counsel  
State Bar No. 24060897  
1701 N. Congress Avenue, Suite 9-180  
P.O. Box 12397  
Austin, Texas 787112397  
512/936-7500 (Telephone)  
512/936-7525 (Facsimile)  
zachary.stephenson@opuc.texas.gov (Service)  
tucker.furlow@opuc.texas.gov (Service)  
opuc\_eservice@opuc.texas.gov (Service)

ATTORNEYS FOR THE  
OFFICE OF PUBLIC UTILITY COUNSEL

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 28th day of October 2021 by facsimile, electronic mail, and/or first class, U.S. Mail.



---

Zachary Stephenson